

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	x	
JOSEPH LABICK,	:	ECF CASE
	:	
Plaintiff,	:	07 CV 6846 (SCR)
	:	
- against -	:	<b>DECLARATION OF</b>
	:	<b>PAUL LIMMIATIS</b>
CONSOLIDATED EDISON COMPANY	:	
OF NEW YORK, INC.,	:	
	:	
Defendant.	:	
_____	x	

Paul Limmiatis, an attorney licensed to practice in this Court and the courts of the State of New York, declares, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am of counsel to Mary Schuette, Esq., attorney of record for Defendant Consolidated Edison Company of New York, Inc. ("Con Edison") in this action. I am familiar with the facts and circumstances of this case, and submit this Declaration in support of Con Edison's motion to dismiss the action pursuant to Fed. R. Civ. P. 12(b)(6).

2. On or about June 28, 2007, Plaintiff commenced this action in the City Court of Yonkers, State of New York, County of Westchester, asserting a single claim for breach of contract. Thereafter, Con Edison was informed by Plaintiff that his claim was for pension benefits under the terms of the Consolidated Edison Retirement Plan ("Plan"). On July 31, 2007, Con Edison removed the action to this Court on the basis of complete preemption under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). A copy of the Notice of Removal and exhibits are attached hereto as Exhibits 1, 1A and 1B.

3. Copies of relevant excerpts from the Plan's Summary Plan Description are attached hereto as Exhibit 2. Specifically, pages 60-61 explain the Level Income Option feature of the Plan, which Plaintiff elected at the time he began receiving his pension. Under this option,

the participant elects to receive a temporary higher pension amount until he becomes eligible for Social Security benefits, at which time his monthly benefit under the Con Edison Plan is permanently reduced.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 6, 2007.

  
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PAUL LIMMIATIS